

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7597

Joint Petition of Central Vermont Public Service )  
Corporation ("CVPS") and Vermont Electric Power )  
Company, Inc. ("VELCO"), for a Certificate of Public Good, )  
pursuant to 30 V.S.A. Section 248, authorizing (1) the )  
reconductoring of 3.9 miles of 46 kV transmission line in )  
Middlebury and Weybridge, Vermont; (2) construction of a )  
new 46 kV transmission line 5 miles in length in Weybridge )  
and New Haven, Vermont; (3) expansion of the CVPS )  
Hewitt Road substation, including the installation of a 46 kV )  
5.4 MVAR capacitor bank, in Bristol, Vermont; (4) )  
installation of new substation breakers at the VELCO )  
Middlebury substation in Middlebury, Vermont; and (5) )  
installation of new substation breakers at the VELCO New )  
Haven substation in New Haven, Vermont – )

Order entered: 5/13/2010

**ORDER RE MOTIONS TO INTERVENE**

On April 29, 2010, James Walsh filed a motion to intervene in this proceeding. On May 3, 2010, Polly Darnell filed a motion to intervene; Ms. Darnell's motion is virtually identical, word for word, to Mr. Walsh's motion. In their motions, Mr. Walsh and Ms. Darnell each assert: "Our property interests, health interests, and interests as ratepayers are significantly and directly impacted by the proceedings of Docket No. 7597 in which CVPS proposes to do additional construction at VELCO's New Haven Substation." Mr. Walsh and Ms. Darnell state that this proceeding includes proposed work on, and addition to, the transformers in the New Haven substation. They also point to unresolved sound-monitoring and aesthetic mitigation issues in Docket No. 6860, in which the New Haven substation was originally approved. According to Mr. Walsh and Ms. Darnell, the aesthetic mitigation could be affected by the additional work proposed in the current proceeding.

On May 6, 2010, Central Vermont Public Service Corporation ("CVPS") filed a response to Mr. Walsh's motion asking that it be denied.<sup>1</sup> On May 12, 2010, CVPS filed a response to Ms. Darnell's motion.<sup>2</sup> As an initial matter, CVPS notes that, in their motions, Mr. Walsh and Ms. Darnell refer to "Forest Drive property owners" without identifying those property owners or indicating whether he is representing them. Accordingly, CVPS treats the motions as individual requests for intervention by Mr. Walsh and Ms. Darnell. CVPS also notes that Ms. Darnell's motion was filed after the intervention deadline.

Turning to the merits of the motions, CVPS contends that the motions are factually inaccurate in that no work on or addition to transformers is proposed in this docket. CVPS asserts that Mr. Walsh's and Ms. Darnell's claims regarding unresolved issues in Docket No. 6860 are unrelated to the current proceeding. CVPS claims that Mr. Walsh and Ms. Darnell have not demonstrated that they satisfy the intervention requirements set forth in Board Rule 2.209. Finally, CVPS asks that, if the motions are granted, the intervention be limited to the specific issue raised in the motions.

For the reasons explained below, I conclude that Mr. Walsh and Ms. Darnell have not demonstrated a sufficient basis to intervene in this docket, and so I deny their motions.

Intervention in Board proceedings is governed by Board Rule 2.209, which provides as follows:

**2.209 Intervention**

(A) Intervention as of right. Upon timely application, a person shall be permitted to intervene in any proceeding (1) when a statute confers an unconditional right to intervene; (2) when a statute confers a conditional right to intervene and the condition or conditions are satisfied; or (3) when the applicant demonstrates a substantial interest which may be adversely affected by the outcome of the proceeding, where the proceeding affords the exclusive means by which the applicant can protect that interest and where the applicant's interest is not adequately represented by existing parties.

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1. CVPS represented that Vermont Electric Power Company, Inc. ("VELCO") and the Department of Public Service ("DPS") agree with CVPS's position.

2. CVPS represented that VELCO agrees with CVPS's position. On May 12, 2010, the DPS submitted a statement joining in CVPS's and VELCO's opposition to Ms. Darnell's motion.

(B) Permissive intervention. Upon timely application, a person may, in the discretion of the Board, be permitted to intervene in any proceeding when the applicant demonstrates a substantial interest which may be affected by the outcome of the proceeding. In exercising its discretion in this paragraph, the Board shall consider (1) whether the applicant's interest will be adequately protected by other parties; (2) whether alternative means exist by which the applicant's interest can be protected; and (3) whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.

(C) Conditions. Where a party has been granted intervention, the Board may restrict such party's participation to only those issues in which the party has demonstrated an interest, may require such party to join with other parties with respect to appearance by counsel, presentation of evidence or other matters, or may otherwise limit such party's participation, all as the interests of justice and economy of adjudication require.

(D) Procedure. An application to intervene shall be by motion made in accordance with these rules. The motion shall be made within a reasonable time after the right to intervene first accrues and shall specifically state the manner in which the conditions of this rule are satisfied.<sup>3</sup>

In their motions to intervene, Mr. Walsh and Ms. Darnell cite V.R.C.P. 24(a) rather than Board Rule 2.209, and rely on *In re Vermont Public Power Supply Authority*, 140 Vt. 424, 440 A.2d 140 (1982) ("*VPPSA*") for the proposition that Rule 24(a) governs intervention in Board proceedings. However, *VPPSA* was decided in November 1981 (with reargument denied in January 1982). At that time the Board had not promulgated rules on intervention, as the *VPPSA* Court observes. 140 Vt. at 429–430, 440 A.2d at 142. In the absence of a Board rule on intervention, in *VPPSA* the parties, the Board itself, and the Court all applied the intervention criteria of V.R.C.P. 24. *Id.* Subsequent to *VPPSA*, the Board adopted its procedural rules, including Rule 2.209, which took effect in July 1983. Because 30 V.S.A. § 11(a) gives the Board express statutory authority to prescribe its own rules of practice and procedure, and because Board Rule 2.104 provides that the Board's rules prevail in the event of a conflict with any

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3. The *Citizens' Guide to the Public Service Board's Section 248 Process* that was distributed at the public hearing in this docket, and that is available on the Board's website, specifically addresses the requirements and procedures for intervening in Board proceedings.

otherwise-applicable Vermont Rule of Civil Procedure, I conclude that Rule 2.209 rather than V.R.C.P. 24(a) governs intervention in this and other Board proceedings.<sup>4</sup>

Mr. Walsh's and Ms. Darnell's motions lack sufficient information upon which to grant intervention under Board Rule 2.209. First, the motions do not identify any conditional or unconditional right to intervene.

Nor do the motions demonstrate that Mr. Walsh or Ms. Darnell has a substantial interest in this proceeding. The motions each allege that "[o]ur property interests, health interests, and interest as ratepayers are significantly and directly impacted . . . ."<sup>5</sup> However, other than this generalized statement, the motions neither describe any specific and particularized interest in this proceeding, nor demonstrate how any such interest may be affected by the outcome of the proceeding. The motions do express the following concerns: (1) sound impacts from "working on and adding to the transformers in VELCO's New Haven substation"; (2) the unresolved status of noise and aesthetic mitigation in Docket No. 6860; and (3) the potential impact of additional construction on the aesthetic mitigation. The first concern is apparently based on a misunderstanding of the proposed project, which does not involve work on or addition to the transformers at the New Haven substation. The second concern is, as CVPS correctly observes, properly addressed in Docket No. 6860. The third concern also relates to the aesthetic mitigation requirements of Docket No. 6860, and to the extent that the proposed construction in the current proceeding might modify the aesthetic mitigation that is required in Docket No. 6860, the petitioners in that docket will need to obtain Board approval in that docket. Furthermore, the motions do not specify the locations of Mr. Walsh's and Ms. Darnell's property in relation to the proposed project, which is of particular relevance given Mr. Walsh's and Ms. Darnell's expressed concerns about sound and aesthetic impacts.

Finally, although the motions do state that Mr. Walsh's and Ms. Darnell's interests "are not adequately represented by any existing parties," they do not explain why that is the case.

Accordingly, I deny Mr. Walsh's and Ms. Darnell's motions to intervene.

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4. Even if V.R.C.P. 24(a) governed this proceeding, I would still deny intervention because the motions do not provide a sufficient basis for concluding that intervention should be granted under the provisions of that rule.

5. Although the motions speak of "we" and "our" and refers to "Forest Drive property owners," neither motion identifies any property owners other than the movant.

**SO ORDERED.**

Dated at Montpelier, Vermont, this 13<sup>th</sup> day of May, 2010.

s/Kurt Janson

Kurt Janson  
Hearing Officer

OFFICE OF THE CLERK

FILED: May 13, 2010

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*